

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

JUDY L. MOON, ET AL

v.

BWX TECHNOLOGIES, INC. ET AL

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Case No. 6:09CV00064

MOTION TO REMAND

Pursuant to 28 U.S.C. Section 1447 (c), the plaintiffs hereby move the Court to remand this case back to the Lynchburg Circuit Court from whence it was removed on the basis that this Court lacks subject matter jurisdiction. Plaintiffs respectfully submits: that the removed lawsuit does not “relate to” the Employer Retirement Income Security Act, 29 U.S.C. Section 1001 et seq., (ERISA) under the conflict preemption provision in 29 U.S.C. Section 1144 (a); that plaintiffs’ lawsuit does not assert any claim for benefits against a ERISA plan or entity affecting the administrative functioning of such a plan; and that plaintiff’s decedent was not eligible to participate in an ERISA life insurance plan at the time of the alleged contract with and payments to BWXT thereby precluding plaintiff from seeking any civil recovery from an ERISA plan under 29 U.S.C. Section 1132 for the alleged wrongs. For the reasons set forth in more detail in the accompanying Memorandum of Law and others deemed proper by the Court, the plaintiffs therefore move the Court to grant their motion to remand, to award reasonable costs and legal fees and for such other and further relief as the Court deems proper.

JUDY L. MOON, et al

By: /s/ Sidney H. Kirstein
Of Counsel

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he emailed a true copy of the foregoing documents to Mr. Kevin Oddo, counsel of record, to his last-known email address this day of January 2010.

/s/ Sidney H. Kirstein
SIDNEY H. KIRSTEIN

motion to remand